SUPREME COURT, U. S.

JUN 11

JOHN F. DAVIS,

No. [redacted] 128

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

ARNOLD TOURS, INC., ET AL., PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE COMPTROLLER OF THE CURRENCY IN OPPOSITION

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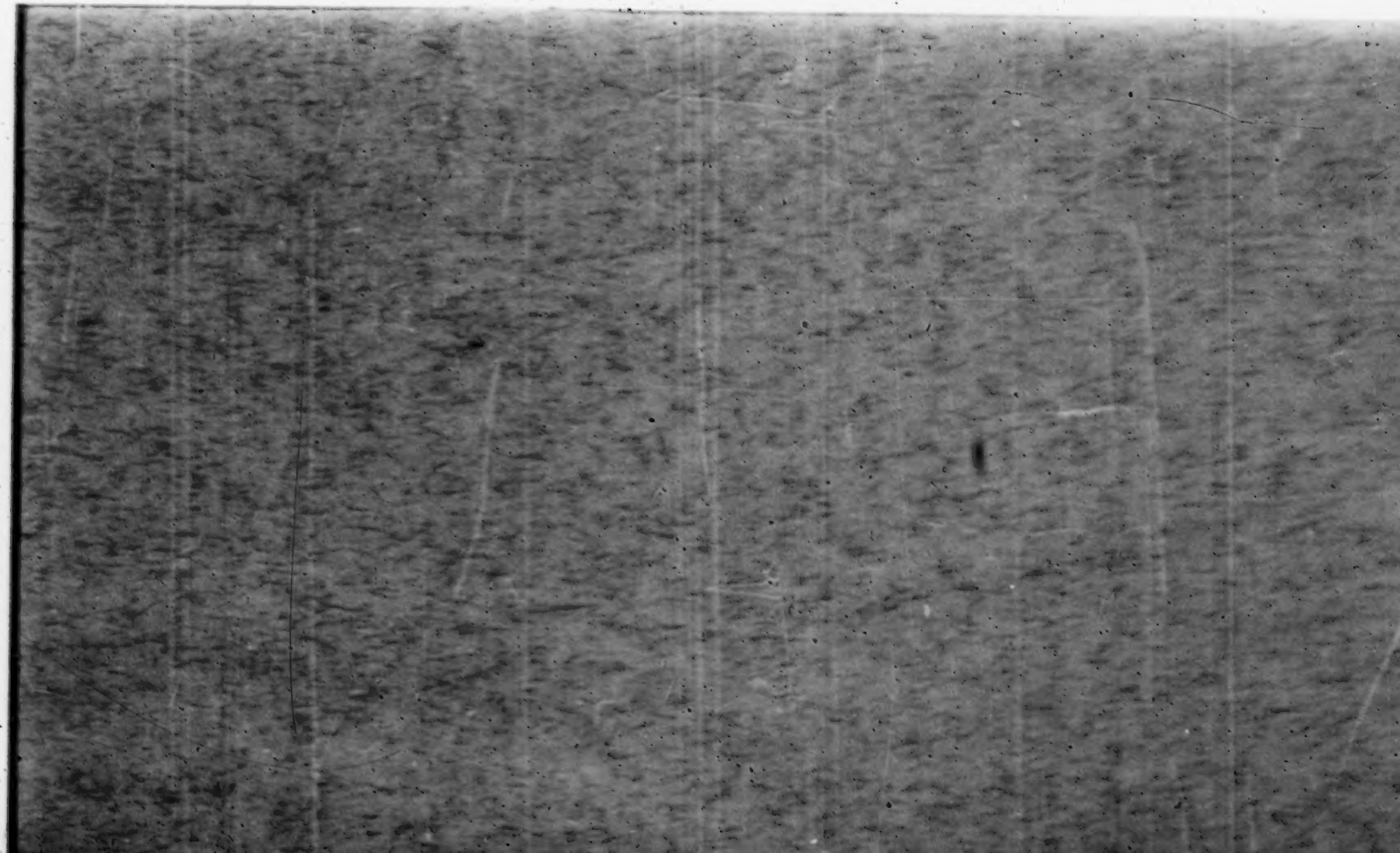

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1407

ARNOLD TOURS, INC., ET AL., PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE COMPTROLLER OF THE CURRENCY IN OPPOSITION

OPINION BELOW

The opinion of the district court is reported at 280 F. Supp. 556. The opinion of the court of appeals (Pet. App. 1a–24a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 25, 1969. The petition for a writ of certiorari was filed on May 19, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. (1958 Ed.)

governmental license or franchise (see *Chicago v. Atchison, T. & S.F. R. Co.*, 357 U.S. 77; *Webster Groves Trust Co. v. Saxon*, 370 F. 2d 384 (C.A. 8)), or a congressional expression of intent to protect plaintiff's class from the competition sought to be prevented (*Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 6-7). Congress may also by express statute permit such attacks in the public interest by "persons aggrieved" by designated governmental rulings. See, *e.g., Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470, 476-477. Absent one of these circumstances, a person whose only claim is that he is a competitor has no sufficient legal interest to enable him to invoke the judicial power to prohibit others from competing with him. See *Rowland Co. v. Hillsman*, 165 U.S. 166, 173-174; *Tennessee Power Co. v. TVA*, 306 U.S. 118, 137-140; *Pennsylvania Railroad Co. v. Dillon*, 335 F. 2d 203, 204 (C.A. 3), certiorari denied sub nom. *Interstate Hacienda S.S. Co. v. Dillon*, 379 U.S. 915; *Association of Data Processing Service Organizations, Inc. v. Camp*, No. 19276, decided February 6, 1969 (C.A. 8), rehearing en banc denied, March 5, 1969.

Quite last term, in *Hardin*, *supra*, 390 U.S. at 6, and in *Flast v. Cohen*, *supra*, 392 U.S. at 101-103, the Court re-examined and reaffirmed the doctrine that standing exists only where the plaintiff can demonstrate some nexus between his status and the purpose of the provision he alleges to have been violated. There can be no serious contention that the "incidental

powers" clause of the National Bank Act, 12 U.S.C. 24 Seventh, was designed to protect travel agents, or any other persons, from competition by national banks. It has never been contended that travel agents have a license or franchise of any kind protecting them from competition. Moreover, petitioners can point to no specific "person aggrieved" judicial review provision in the National Bank Act, such as was found sufficient in *Sanders*, *supra*, to allow a competitor to challenge a ruling under the Federal Communications Act. The court below properly held that the Administrative Procedure Act was not designed to achieve so substantive an alteration in the law of standing as petitioners assert. See, *e.g.*, *Rural Electrification Administration* v. *Northern States Power Co.*, 373 F. 2d 995, 999, 1003 (C.A. 8); *Kansas City Power & Light Co.* v. *McKay*, 225 F. 2d 924, 931, 933 (C.A.D.C.).

2. There is no conflict of decisions among the courts of appeals that would warrant a grant of certiorari to consider the sweeping proposition for which petitioners contend. To be sure, the opinion of the Court of Appeals for the Fifth Circuit in *Saxon* v. *Georgia Assn. of Independent Insurance Agents*, 399 F. 2d 1010, stated, as an alternative ground for granting

standing to insurance agents attacking certain insurance services provided by national banks, that an objection to allegedly unlawful competition without more is sufficient to confer standing. But the court also found—applying the same general test applied by the First Circuit in this case—that a section of the National Bank Act (39 Stat. 753, 12 U.S.C. 92) limiting insurance activities of national banks had been enacted for the direct protection of insurance agents. 399 F. 2d at 1018. Since the court thus found a "statutory aid to standing", its decision did not depend on the court's alternative excursion into territory that has been closed by this Court's consistent and recently reaffirmed decisions. Under the circumstances, there is no conflict that would warrant further reconsideration of the established fundamental principles.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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